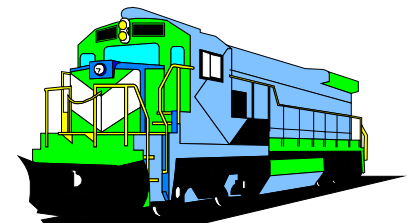


**2008/2009 Report On
Transportation Issues
Montana Rail Service Competition Council
Report
November 2008**

**Whiteside & Associates
Billings, Montana
November, 2008**

2008 – A Year Of Successes In Transportation For Captive Shippers

- Local, State and Federal Efforts all coming together to produce successes
- Success is occurring at all levels
- A Quick Review:



Federal Legislative Transportation Activity

Activity At Federal Level

- HR 2125 and S953 Rail Competition – 58 House members (39 democrats 18 Republicans) and in Senate 13 Senators (9 democrats 4 Republicans) – most ever
- HR 1650 and S 772 Rail Anti-trust Bills move from Committee to Floor for Vote

Rail Captive Shipper Legislative Support Reaches Record Levels

S. 953, Railroad Competition and Service Improvement Act of 2007 (Cosponsors: 12)

Sen. Rockefeller, John D., IV (D-WV)*

Sen. Baucus, Max (D-MT)*

Sen. Cantwell, Maria (D-WA)*

Sen. Craig, Larry E. (R-ID)*

Sen. Crapo, Mike (R-ID)*

Sen. Dorgan, Byron L. (D-ND)*

Sen. Johnson, Tim (D-SD)

Sen. Klobuchar, Amy (D-MN)*

Sen. Landrieu, Mary L. (D-LA)

Sen. Tester, Jon (D-MT)*

Sen. Thune, John R. (R-SD)

Sen. Vitter, David (R-LA)*

H.R. 2125, Railroad Competition and Service Improvement Act of 2007 (Cosponsors: 57)

Rep Oberstar, James L. [MN-8] (introduced 5/3/2007)

Rep Alexander, Rodney [LA-5]

Rep Baker, Richard H. [LA-6]

Rep Berry, Marion [AR-1]

Rep Boren, Dan [OK-2]

Rep Braley, Bruce L. [IA-1]

Rep Cubin, Barbara [WY]

Rep Ellison, Keith [MN-5]

Rep Frelinghuysen, Rodney P. [NJ-11]

Rep Gillmor, Paul E. [OH-5]

Rep Hare, Phil [IL-17]

Rep Hinojosa, Ruben [TX-15]

Rep Holden, Tim [PA-17]

Rep Hooley, Darlene [OR-5]

Rep Jefferson, William J. [LA-2]

Rep Kagen, Steve [WI-8]

Rep Lampson, Nick [TX-22]

Rep McNulty, Michael R. [NY-21]

Rep Miller, Brad [NC-13]

Rep Moore, Gwen [WI-4]

Rep Musgrave, Marilyn N. [CO-4]

Rep Paul, Ron [TX-14] - 6/20/2007

Rep Peterson, Collin C. [MN-7]

Rep Pomeroy, Earl [ND]

Rep Rehberg, Dennis R. [MT]

Rep Ross, Mike [AR-4]

Rep Sires, Albio [NJ-13]

Rep Space, Zachary T. [OH-18]

Rep Udall, Mark [CO-2]

Rep Wamp, Zach [TN-3]

Rep Andrews, Robert E. [NJ-1]

Rep Baldwin, Tammy [WI-2]

Rep Bonner, Jo [AL-1]

Rep Boustany, Charles W., Jr. [LA-7]

Rep Butterfield, G. K. [NC-1]

Rep Delahunt, William D. [MA-10]

Rep Franks, Trent [AZ-2]

Rep Garrett, Scott [NJ-5]

Rep Grijalva, Raul M. [AZ-7]

Rep Herseth Sandlin, Stephanie [SD]

Rep Hirono, Mazie K. [HI-2]

Rep Holt, Rush D. [NJ-12]

Rep Inglis, Bob [SC-4]

Rep Jindal, Bobby [LA-1]

Rep Kind, Ron [WI-3]

Rep McCollum, Betty [MN-4]

Rep Melancon, Charlie [LA-3]

Rep Mollohan, Alan B. [WV-1]

Rep Murphy, Patrick J. [PA-8]

Rep Obey, David R. [WI-7]

Rep Perlmutter, Ed [CO-7]

Rep Poe, Ted [TX-2]

Rep Ramstad, Jim [MN-3]

Rep Renzi, Rick [AZ-1]

Rep Simpson, Michael K. [ID-2]

Rep Snyder, Vic [AR-2]

Rep Towns, Edolphus [NY-10]

Rep Walz, Timothy J. [MN-1]

Record Levels Rail Captive Shipper Legislative Support Reaches

- **S. 772, Railroad Antitrust Enforcement Act of 2007 (Cosponsors: 10)**
- Sen. Kohl, Herb (D-WI)*
- Sen. Coleman, Norm (R-MN)*
- Sen. Feingold, Russell D. (D-WI)*
- Sen. Harkin, Tom (D-IA)
- Sen. Rockefeller, John D., IV (D-WV)*
- Sen. Vitter, David (R-LA)*
- Sen. Dorgan, Byron (D, ND)
- Sen. Leahy, Patrick (D-VT)
- Sen. Biden, Joseph (D-DE)
- Sen. Schumer, Charles (D-NY)

Passed out of Committee to Floor

H.R. 1650, Railroad Antitrust Enforcement Act of 2007 (Cosponsors: 21)
Rep. Baldwin, Tammy [D, WI-02]*
Rep. Alexander, Rodney [R, LA-05]*
Rep. Baker, Richard H. [R, LA-06]*
Rep. Boren, Dan [D, OK-02]
Rep. Grijalva, Raul [D, AZ-07]
Rep. Kagen, Steve [D, WI-08]
Rep. Pomeroy, Earl [D, ND-At Large]*
Rep. Renzi, Rick [R, AZ-01]
Rep. Ross, Mike [D, AR-04]
Rep. Snyder, Vic [D, AR-02]
Rep. Walz, Timothy J. [D, MN-01]*
Rep. Wamp, Zach [R, TN-03]
Rep. Berry, Marion [D, AR-1]
Rep. Frelinghuysen, Rodney [R, NJ-11]
Rep. Garrett, Scott [R, NJ-05]
Rep. Gillmor, Paul E. [R, WI-08]
Rep. Inglis, Bob [R, SC-04]
Rep. Kind, Ron [D, WI-03]
Rep. Perlmutter, Ed [D, CO-07]
Rep. Bonner, Jo [R, AL-1]

Passed out of Committee to Floor

ARC Members and Groups Send Joint Letter Urging Hearings on Rail Competition – All Montana Farm Organizations Participated – In All 43



The Honorable James Oberstar
Chairman
Committee on Transportation & Infrastructure
U.S. House of Representatives
Washington, DC 20515

September 23, 2008

Dear Mr. Chairman,

As leading national organizations representing agriculture and other shipper interests whose members depend on rail for a significant portion of their transportation needs, we are writing to express our continued strong support for H.R. 2125, the Rail Competition and Service Improvement Act of 2007. We urge you to continue your leadership on this issue for the remainder of the 110th Congress and to make it a highest priority at the beginning of the next year.

Rail transportation remains a critical component to our industries as we move products to businesses and consumers all around the country. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonable high rates and unreliable service for captive shippers, which inevitably results in increasing costs for the consumer and loss of market share to international competitors.

The Honorable James Oberstar
September 23, 2008
Page 2

Provisions included in H.R. 2125 remain critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and anticompetitive practices, and have access to reliable rail service. The Final Offer Arbitration (FOA) provision, as included in H.R. 2125, is especially important, and we urge you to maintain this provision and extend it to shippers beyond agriculture.

We understand that little time remains in the 110th Congress to move this bill forward. However, we urge you to continue keeping this legislation a high priority and take action on it as expeditiously as possible at the beginning of next year. We look forward to working with you and your colleagues to ensure that this legislation becomes law in 111th Congress.

Sincerely,

AGC Flat Glass North America, Inc.
Alliance for Rail Competition
American Sugarbeet Growers Association
Basin Electric Power Cooperative
Chippewa Valley Bean Company
Colorado Dry Bean Administrative Committee
Colorado Wheat Administrative Committee
Colorado Association of Wheat Growers
Glass Producers Transportation Council
Idaho Barley Commission
Idaho Grain Producers Association
Jack's Bean Company LLC
Minnesota Association of Wheat Growers
Minnesota Soybean Growers Association
Minnesota Barley Growers Association
Montana Farm Bureau Federation
Montana Farmers Union
Montana Grain Growers Association
Montana Women Involved in Farm Economics
National Association of Wheat Growers
National Barley Growers Association
National Corn Growers Association

National Farmers Union
Nebraska Wheat Board
North Dakota Grain Dealers Association
North Dakota Wheat Commission
Oklahoma Wheat Growers Association
Oregon Wheat Growers League
Otter Tail Power Company
Owens Illinois, Inc.
PPL Corporation
South Dakota Wheat Commission
South Dakota Wheat Inc.
Texas Wheat Producers Board
Texas Wheat Producers Association
U.S. Beet Sugar Association
United States Dry Bean Council
USA Dry Pea & Lentil Council
USA Rice Federation
Washington Association of Wheat Growers
Washington Barley Commission
Washington Wheat Commission
Western Fuels

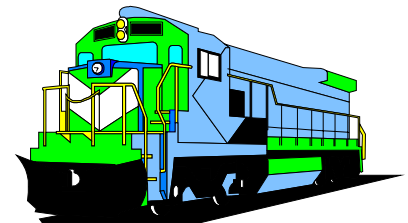
Status of Shipper Legislation in the 110th

- Rail Labor bill is passed and onto White House
- Rail Anti-trust Bill has been reported to both Houses – awaiting Congressional action – may still pass – some key members want it to
- Rail Competition bill – awaiting hearings in both Houses – not likely anything will be done this session but will be back in 111th
- Successes: this session witnessed success on all fronts for rail customers. *Pro-Captive Shipper Members of Congress added eight separate amendments to various bills.* Three separate government studies on rail customer concerns are underway in the executive branch. And almost every Member of Congress and countless Capitol Hill staff members have been briefed on the lack of competition in the national freight rail system.

Exciting Happens in DC

- 111th Congress will have new look
- Chairman Oberstar will continue to have control of House T&I – Highway bill will be in up on 111th
- Senate Commerce Cmte – lots of changes – good for rail shippers
 - Chairman Inouye will likely move to head up Appropriations – as Senate Byrd is stepping down
 - Senator Stevens will probably not be in Senate long
 - **Likely New Chairman of Commerce – Senator Rockefeller – lead sponsor on Rail Competition Bill**
 - **Ranking Member of Full Committee – Sen. Kay Bailey Hutchinson – strong advocate for captive shippers**

Surface Transportation Board (STB) Transportation Activity



Successes At STB

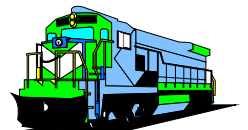
- For years the STB has been overtly RR oriented
- After visits to Montana at the invitation of Governor Schweitzer, the Chairman and Past Chairman initiated many hearings after town meetings all over Montana on subjects affecting captive shippers
- Is this a changed STB? Some signs of change are visible

Montana Wheat & Barley Committee STB Activities

- MWBC has been the most active of any agricultural organization in STB hearings in history + many Montana Ag Group have co-participated in STB hearings including MFU and MGGA
- MWBC has provided a great deal of transportation data for proceeding documents at various venues
- MWBC has participated in all major Ex Parte proceedings held at the STB during the last 10 years (16 in all)
- Topics have included Fuel Surcharges, Small Rate Case rules, Common Carrier Obligation, Competitive Access, Cost of Capital, Grain Transportation, etc.

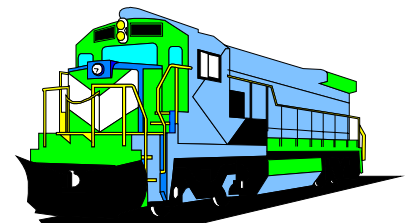
Captive Shipper Issues Are Being Heard At the STB

- **Fuel Surcharges** – changed the way and amount the railroads can collect fuel surcharges – several proceedings under way to further challenge fuel surcharge collections
- **Small Rate Case Rules** – issues major rule changes designed to give small rate cases more access to adjudication – Appeals Court challenge underway – MWBC, Governor Schweitzer and MGGA are parties
- **Common Carrier Obligation** – hearings on whether the railroads are living up to the CCO under the law – awaiting STB ruling
- **Competitive Access** – hearings on the extent of whether the railroads are limiting competitive access to shippers
- **Cost of Capital** – revised the 25 year out dated way of determining Cost of Capital – which under the new rules has found that virtually all major railroads are now revenue adequate
- **Grain Transportation** – held hearings on grain transportation to expose problems and find solutions for the farm producer – utilize a great deal of Montana data from MFU/MGGA/MFB members for the studies
- **Infrastructure Needs** – held hearings on the future infrastructure needs of the nation's railroads and its potential effects on rail customers



STB Small Rate Case Rules Challenges – Oct. Opening Statements Filed

- MWBC + Governor Schweitzer continue to be leading advocates of challenge to the STB new small rate case rules
- Work in Montana has shown that the new rules have major holes and may stifle some effective challenge
- The major thrust of the challenge continues to be in the threshold levels of the new rules – they are simply too low and they result in excessive rates after adjudication



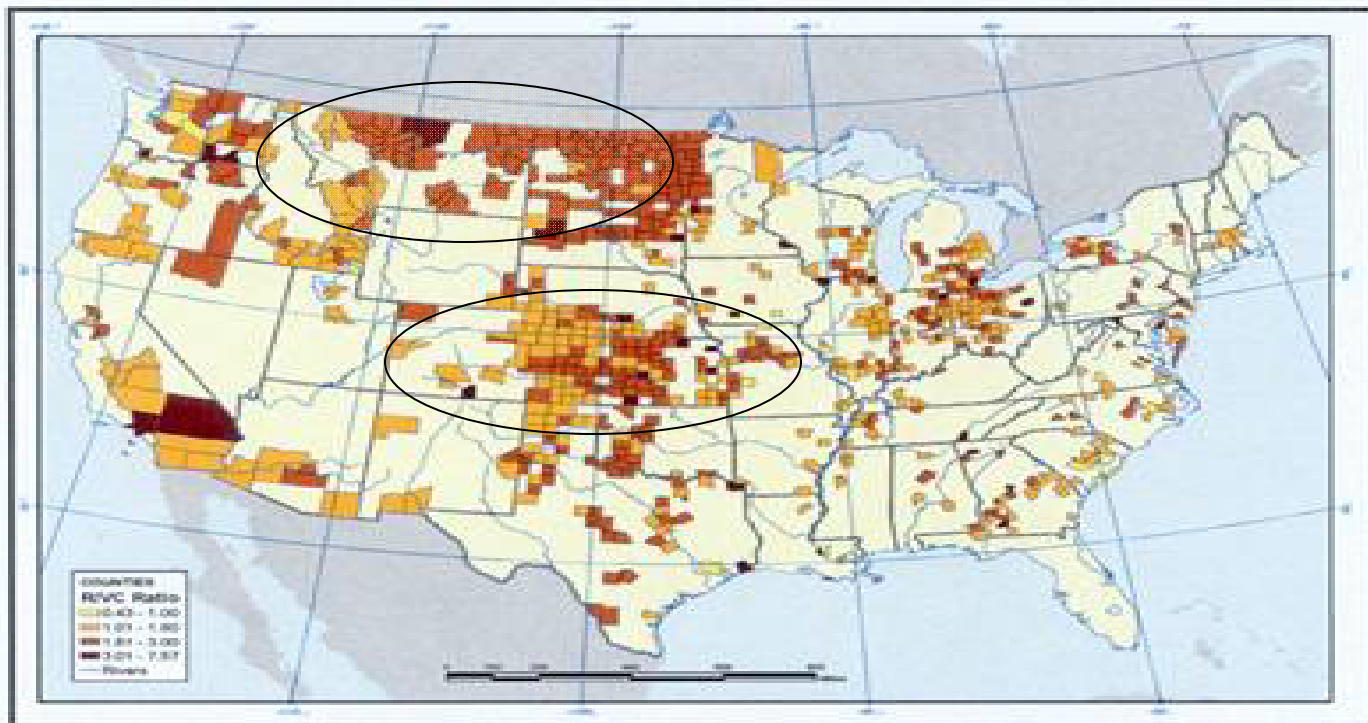
Christensen Study on Rail Competition Released

- Background: After the GAO 2001 and 2006 Studies found areas of captivity – and suggested STB needs to study the captive shippers and their plight – with an eye to develop ways to solve this captivity problem – the STB initially balked. GAO stated:
 - We are recommending that STB conduct a rigorous analysis of the state of competition nationwide and, where appropriate, consider the range of actions available to address problems associated with the potential abuse of market power.
- In 2007, STB commissioned Christensen to perform a \$1MM study on Rail Competition Survey – a 600 page report
- Hearing on Nov 6th at STB – no public
- Public Comments being solicited now

General Findings of Christensen Study

1. Areas of high R/VC on Wheat continue to exist – Areas in Northern Plains and Central Plains – confirming GAO reporting

FIGURE ES-3
R/VC AVERAGES BY ORIGIN COUNTY FOR WHEAT SHIPMENTS
2001-2006 CARLOAD WAYBILL SAMPLE



The Christensen Study Confirms The High Revenue and Cost Ratios Found In Montana

- The Christensen economists found that the wheat rail rates from Montana are some of the highest in the nation – some counties averaging over 300% of revenue to variable cost
- These confirm the GAO study findings in 2006
- These confirm the rate levels found by Fauth & Associates – rail cost consultants in summer of 2008
- These confirm the rate levels found by L.E. Peabody cost consultants in summer of 2008
- These confirm the Revenue to Variable cost numbers published for the past 20 years by Whiteside & Associates and the Montana Wheat & Barley Committee

General Findings of Christensen Study – Continued

2. Rails Are Generally exercising increased market power, “the exercise of market power appears to have increased in the freight railroad industry over the last twenty years but has been necessary in order to obtain revenue sufficiency .”
3. Study concludes that railroad’s revenues ‘noticeably’ exceed industry costs
4. Economists with Christensen would not say whether railroads are ‘abusing market power’ – stating that is a policy decision for STB to make
5. They did say that shippers that lacked competitive alternatives paid higher rates

General Findings of Christensen Study – Continued

6. Christensen at STB direction looked at rail competition proposals in Congress – It liked Reciprocal Switching and Terminal Access provisions

TABLE 5-8 LIKELY ECONOMIC EFFECTS OF VARIOUS OPEN-ACCESS PROPOSALS				
	Reciprocal Switching	Bottleneck Rates	Terminal Agreements	Trackage Rights
Economies of Density	Potential gains	Gains unlikely	Potential gains	Potential gains
Length-of-Haul Economies	Small loss	Potentially large loss	No gain to small gain	No gain to small gain
Vertical Economies	Small loss	Potentially large loss	Small loss	Potentially large loss
Investment Incentives	Small effect	Potentially large effect	Small effect	Potentially large effect
Railroad Profitability	Small effect	Potentially large effect	Small effect	Potentially large effect
Coordination Costs	Small to moderate	Small to moderate	Small to moderate	Potentially large
Competitive Response	Most likely	Least likely	Most likely	Somewhat likely
Shipper Gains	Most likely	Least likely	Most likely	Somewhat likely

General Findings of Christensen Study – Continued

7. Christensen economists also liked Final Offer Arbitration with one major change

“To the extent that the threat or possibility of final-offer arbitration encourages parties to negotiate and reach voluntary agreement or resolve disputes, as suggested by a number of stakeholders we interviewed, it would improve the functioning of private matters without imposing additional regulatory matters.”

The one major change they would like to see is that the provision ensure that the arbitrator has experience in the economics of railroading.

General Findings of Christensen Study – Continued

8. The Christensen folks want to rely in addition to R/VC ratios for determining captivity classification – a new standard called market factors
9. Market dominant railroads appear to react to political pressure. “Our results with respect to a single railroad serving the origin county indicate that rail rates are commonly higher than they would be in the presence of even very limited railroad competition. Railroads appear to exercise some degree of local market power where possible, but are tempered by the prospect that large markups may elicit regulatory attention if not direct intervention. That is, monopoly railroads may effectively cede some market power to avoid regulatory scrutiny.”

Are RR Capacity Constraints Real?

10. In September of 2007, Cambridge Systematics published a study sponsored by the Association of American Railroads on railroad infrastructure needs Freight Rail (Cambridge Systematics, *National Rail Freight Infrastructure Capacity and Investment Study*, prepared for the Association of American Railroads, September 2007.)
11. Per Christensen: “This study shows few current problems with available freight railroad infrastructure capacity as 88 percent of corridor mileage is below capacity, and less than one percent is above capacity.”

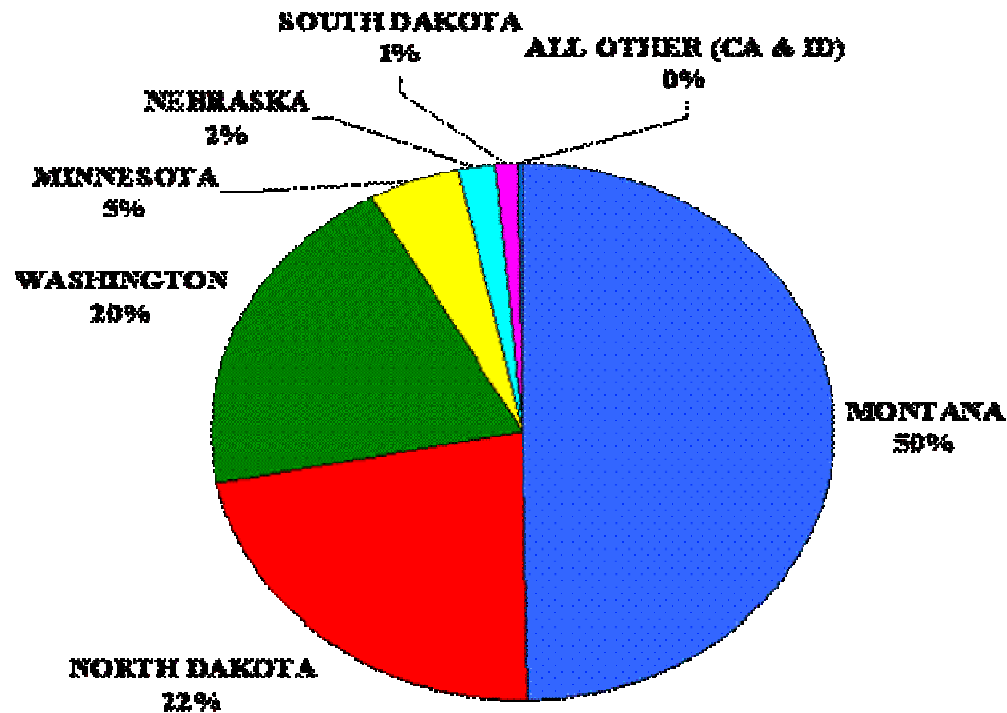
Capacity Constraints?

12. Christensen goes on to state: “With the caveat that congestion issues are likely to continue to exist at localized points and cause service performance issues, near-term system wide railroad capacity constraints are not likely to be a major issue.”
13. Their advice: “it is our assessment that one must treat these forecasts of future capacity needs as tentative, at best, particularly given the current economic climate the U.S.”

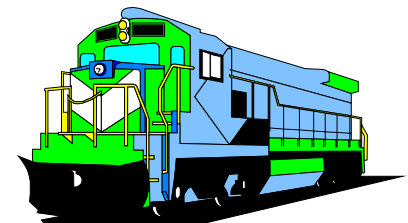
FACTUAL DATA ON MONTANA RAIL MOVEMENTS

Montana Wheat Shipments Dominate The BNSF PNW Movement

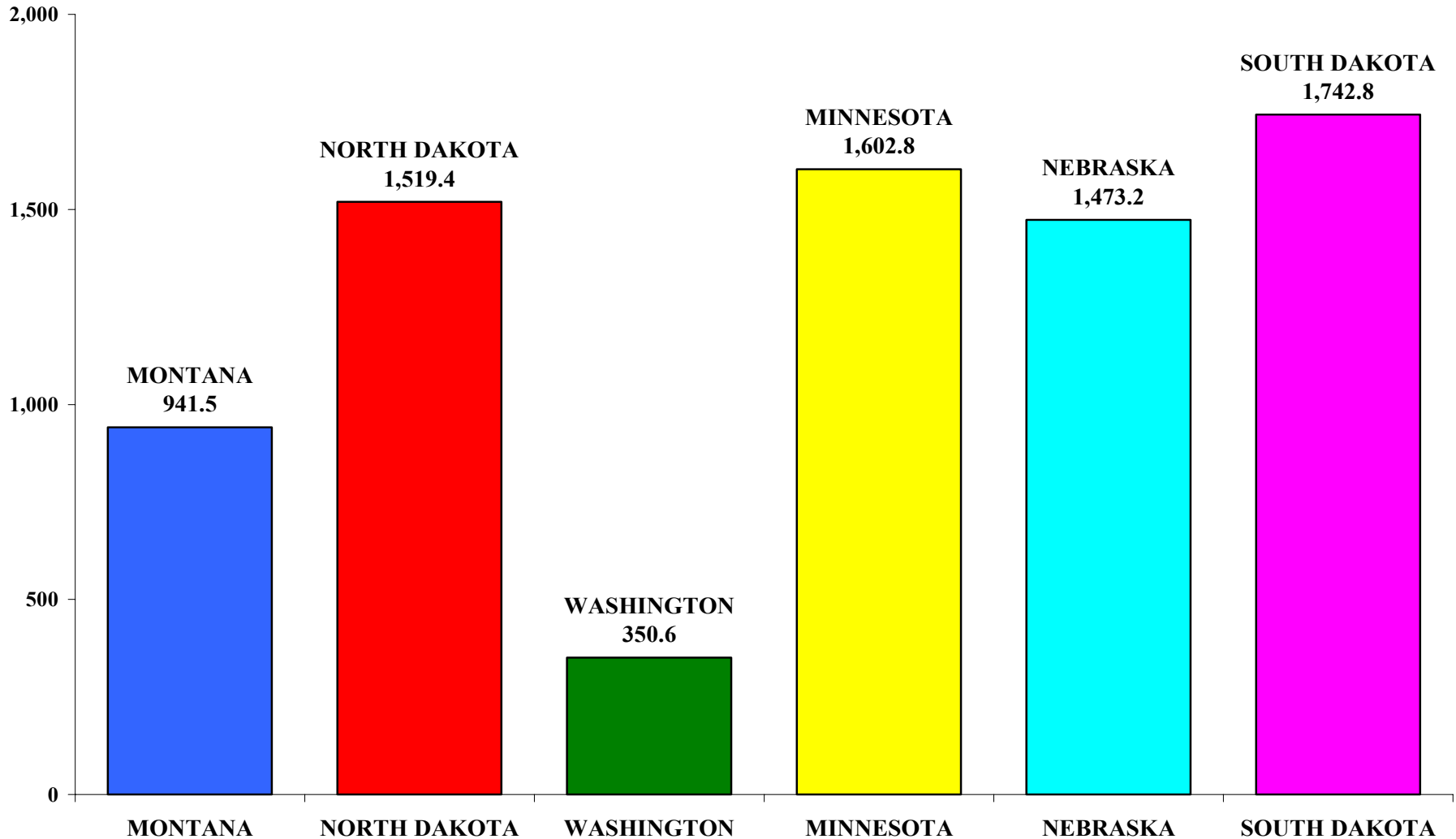
**TOTAL BNSF ORIGINATED WHEAT CARLOADS (\$1,806)
MOVING TO PNW EXPORT TERMINALS**



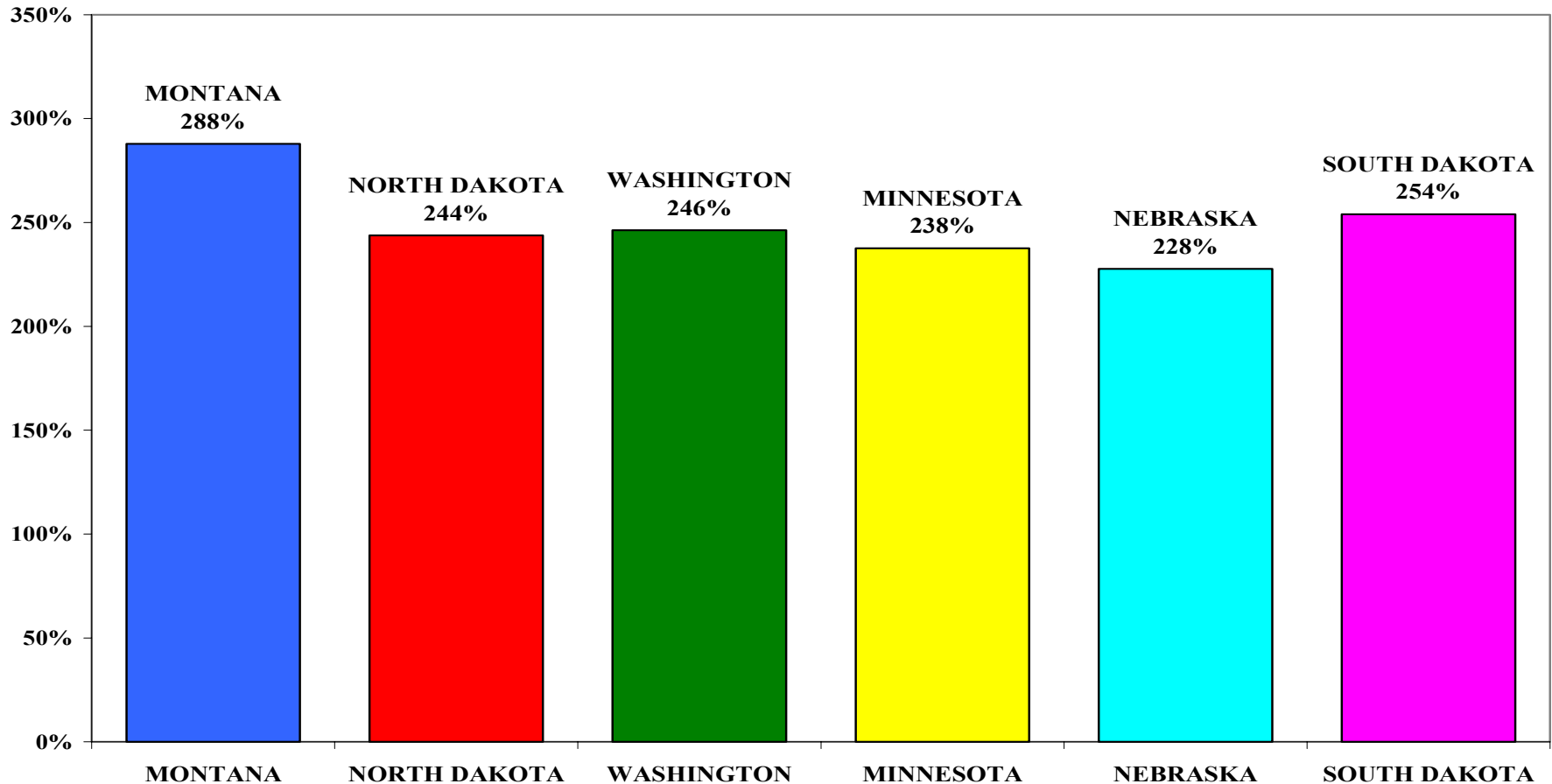
Source: Fauth & Associates, Washington DC



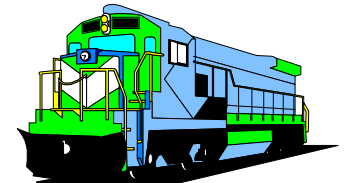
Average Miles for BNSF Wheat Movements From Origin States To PNW Export Grain Terminals



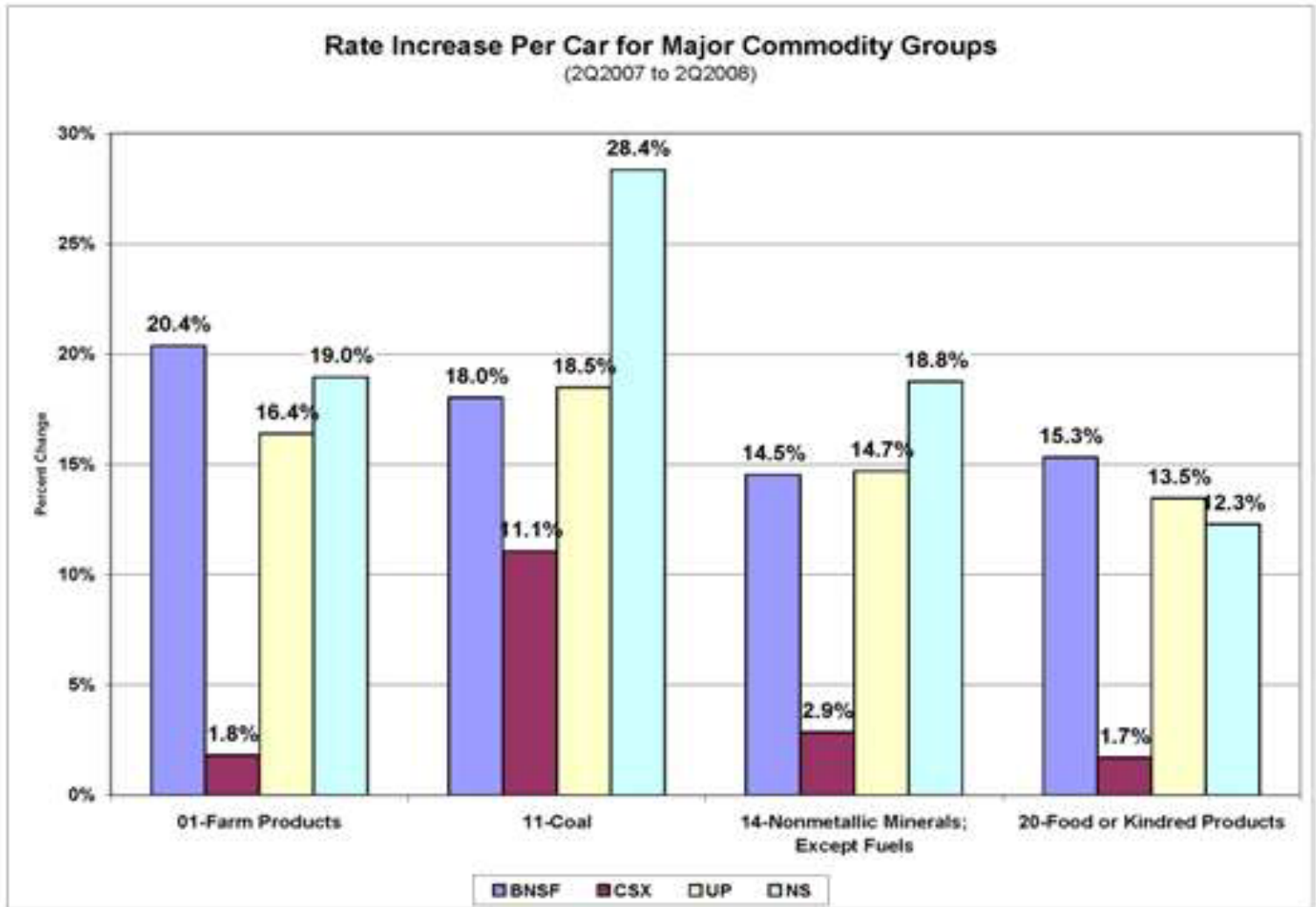
Average R/VC Ratios for Wheat Movements of STB Jurisdictional Traffic (R/VC>180%) Moving in 100+ Cars per Trains To PNW Export Terminals



**Source: Fauth & Associates, Washington DC
& L.E Peabody and Associates, Washington DC**



Avg. Annual Change for Major Commodity Groups on 4 Large U.S. Railroads – Source: Escalation Consultants, Inc.



Source: Railroad's QCS filings to the STB as contained in the Rail Rate Checker internet database program

BNSF Reports Record Profits

Up 21%

- **BNSF Railway Reports 3Q Net Income of \$695 Million, Up From \$530 in 3Q 2007; And Nine-Month Net Income of \$1.5 Billion**
- "In the third quarter, BNSF achieved our best quarterly earnings per share in the history of the Company," said **Matthew K. Rose**, BNSF Chairman, President and Chief Executive Officer.
- **Third-quarter 2008 freight revenues** increased \$818 million, or 21 percent, to \$4.77 billion compared with \$3.95 billion in the prior year.
- The 21-percent increase in revenue was primarily attributable to improved yields and an increase in fuel surcharges of approximately \$570 million driven by higher fuel prices.
- **Agricultural Products revenues** were up \$227 million, or 33 percent, to \$909 million, predominately due to strong unit volumes in ethanol, corn and feeds and improved yields.

UP REPORTS RECORD EARNINGS – Profits Up 38% in Third Quarter!

- While the rest of the economy suffers....no wonder Buffet bought in....
- Union Pacific (UNP) reported a 38% jump in profit in the third quarter, beating analysts' expectations.
- The railroad company weighed in with profits \$703 million, or \$1.38 a share -- up from the \$532 million it earned in the same quarter last year. Analysts polled by Thomson Reuters had expected the company to earn \$1.30 in the third quarter.
- **The company saw its average freight revenues jump by 16%, led by big gains in agriculture and energy shipping. Average revenue per car also soared 22%, with broad gains in all categories.**

STATE LEVEL ACTIVITY

Governor Schweitzer Has Been Very Active in Representing Montana Rail Customers

- He has **brought to Montana the current and previous Chairmen of the STB** – holding town meetings all over Montana to provide insight to the STB about the effects of lack of competition
- He has **flown to DC to testify before the STB** in the extremely important Fuel Surcharge hearings in which the STB found that current fuel surcharge practice by the U.S. railroads was unlawful and ordered methodology changes
- The **Governor has participated as a party of record in 5 major landmark cases** representing Montanans before the STB
- This **Administration has formed and worked with the Montana Rail Competition Council** which is seeking ways to lessen the lack of rail competition in the state on Montana industry
- **Ron DeYong, Director, MT DOA – pushed through its first support for Rail Competition legislation in NASDA** – the National Association of State Departments of Agriculture
- **Governor and Attorney General continue to seek ways to mitigate the effects of lack of rail competition** in the state after seeking Legislative funding to pursuer efforts

Montana Rail Service Competition

- Chaired by Mike O'Hara and Vice Chair Carla Allen of CMR
- Continuing to develop Statewide plans
- Report to next legislature – being prepared

BNSF and Grower Groups Roll Out Mediation/Arbitration Process

New – will require careful study and
evaluation of transportation professionals
– MGGA is here to explain

At Federal level there continues to be a
push for Final Offer Arbitration to provide
solutions for the rail customers

Remember: Final Offer Arbitration is utilized in
Canada rail transportation, by the STB in dispute
resolution, and many parts of the our economy
to facilitate solutions

**All of This Activity
Is Progress**

Report on Rail Access

- Pursuant to the MT RSCC request – a report on Rail Access as being studied by the STB
- STB decided to increase scrutiny of new interchange commitment in light of shipper testimony in Ex Parte No. 575, Review of Rail Access & Competition Issues
- On existing interchange commitments, the Board will only look at one if a shipper brings a regulatory challenge but STB will review all future interchange commitments proposed

USDA Statements On Interchange/Paper Barriers

- USDA: “USDA urges the Board to review all existing contractual interchange commitments – without requiring shipper challenge – in order to promote competition, efficient movement of rail traffic and discourage unnecessary charges and penalties that may retrain trade.”
- “The Rail Transportation Policy (ICC Termination Act of 1995, §10101) requires the Board to “ensure effective competition between rail carriers and other modes.”
- USDA is concerned that may existing paper barriers may violate the Sherman Act (15 U.S.C. §1) which prohibits restraint of trade
- Lack of shipper involvement in the negotiation of paper barriers is troubling to USDA.

Ex Parte No. 575

National Grain and Feed Association Views

- “The right to impose them (paper barriers) free from Board scrutiny should be reconsidered”
- The NGFA believes that the public Board’s abandonment process “offers a far superior pro-competitive alternative than does unscrutinized transaction resulting in paper barrier restrictions.”
- Abandonment offers entertainment of offers for financial assistance for continued operations
- “Permitting shippers to pursue alternative routing is far more important today than it was in years past.”

National Transportation Policy – Mandates STB Focus On Competition

Title 49, Subtitle IV, Part A, Chapter 101: Section 10101. - Rail transportation policy

In regulating the railroad industry, it is the policy of the United States Government

- **(1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;**
- **(2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;**
- **(3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board;**
- **(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;**
- **(5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;**
- **(6) to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital;**
- **(7) to reduce regulatory barriers to entry into and exit from the industry;**
- **(8) to operate transportation facilities and equipment without detriment to the public health and safety;**
- **(9) to encourage honest and efficient management of railroads;**
- **(10) to require rail carriers, to the maximum extent practicable, to rely on individual rate increases, and to limit the use of increases of general applicability;**
- **(11) to encourage fair wages and safe and suitable working conditions in the railroad industry;**
- **(12) to prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination;**
- **(13) to ensure the availability of accurate cost information in regulatory proceedings, while minimizing the burden on rail carriers of developing and maintaining the capability of providing such information;**
- **(14) to encourage and promote energy conservation; and**
- **(15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part**

Other Points Made By Shippers In Discussion of Rail Access and Paper Barriers

- Terms of interchange commitment should be publicly available
- Past interchange commitments were reached without the input of affected shippers
- Barriers to interchange must be reasonable or face anti-trust implications
- Interchange agreement that limit unrestricted freedom to interchange restrict access to markets
- The right to impose paper barriers without public involvement does not promote STB's even-handed regulatory oversight or fairness

Other Points Made By Shippers In Discussions about Rail Access and Paper Barriers (Cont.)

- RR's claim that paper barriers are justified because they allow light-density lines to sold for lower prices than an unrestricted sale or lease – whether or not that claim is valid depends on the specific economics of each transactions.
- Many shippers feel that it should be possible in each instance of line sale to identify the assumptions upon which the paper barriers are based in a public forum in order to calculate the period of time those restrictive interchange agreements need to be in place.
- Many shippers do not believe that RIA (Rail Industry Agreement) between Class I and short lines to relax paper barriers for new traffic – is a substitute for the exercise of oversight by the Board and full public record.

What Montana Wheat & Barley Committee Has Stated on The Issue Of Review of Rail Access

- The problem is simple. “When shortlines are created, they are created with a historic traffic base. The shortlines ... saddled with paper barriers ... keep them from developing new traffic or expanding their traditional traffic.”
- Class I when they have future mergers are reaping the STB granted ‘new’ rights, efficiencies, etc. but no protections for shortlines.
- Lifting of all previously granted paper barriers should be one of the prices in all future rail mergers in order for Class I’s to attain their merger goals.

BNSF Quoted the MRL Control Decision in a Report to MTRSCC BUT THERE WAS MORE TO THE DECISION

- In the last meeting, BNSF supplied information from the MRL decision in 1988 however, to fully inform the Council – it is important to look at the dissents spelled out in the decision – there was a good deal of wrangling over this decision at the STB – one of the largest shortline spinoffs at the time.
- Decision: ICC Finance Docket No 31089 dated May 26 1988 regarding Montana Rail Link, Inc., Exemption Acquisition and Operation -Certain lines of the Burlington N RR.

Commissioner Simmons Stated the MRL Decision Represented A 'Disturbing Trend'

- Commissioner Simmons suggested that the case
 - represented a "disturbing trend" and
 - he remarked that the Commission's approach failed to maintain the agency's historic practice of working to "increase the level of competition" and to protect captive shippers: He said
- "I cannot subscribe to the majority decision which , in my view, endorse a disturbing trend in rail spinoffs. “
- “This trend is the increasing prevalence of provision in sales agreements which seriously hamper the new carrier's ability to complete. “
- “The numerous limitations impose on Montana Rail Link's ability to offer responsive and competitive service should receive the most careful scrutiny to this Commission. This simply has not been done in today's decision.”
- “Especially since the passage of the Staggers Act, the ICC has worked to increase the level of competition among rail carriers while maintaining necessary protections for captive shippers. The analysis of competitive issues in the majority's decision is inconsistent with that goal.”

Commissioner Lamboley Filed A Lengthy Dissent in MRL Decision

- Commissioner Lamboley took the extraordinary step in the Montana Rail Link case of filing a lengthy, separate dissent nearly two months after the date of the Commissions decision.
- Commissioner Lamboley sharply challenged the interchange restrictions in the BN agreement which imposed supplemental charges on potential MRL interlines with other carriers.
- According to Commissioner Lamboley, "evidence of a restrictive tie-in arrangement between BN and MRL and substantial financial and operational dependence of MRL on BN combined with the closure of three gateways, substantiate the existence of significant anti-competitive consequences and concerns involved in this transaction."
- Commissioner Lamboley characterized Montana Rail Link as "low cost BN subsidiary".
- He also observed that one is moved to conclude that this transaction is a vehicle to provide a unilateral remedy to BN's labor concerns.

Report on Grain Rail Rates

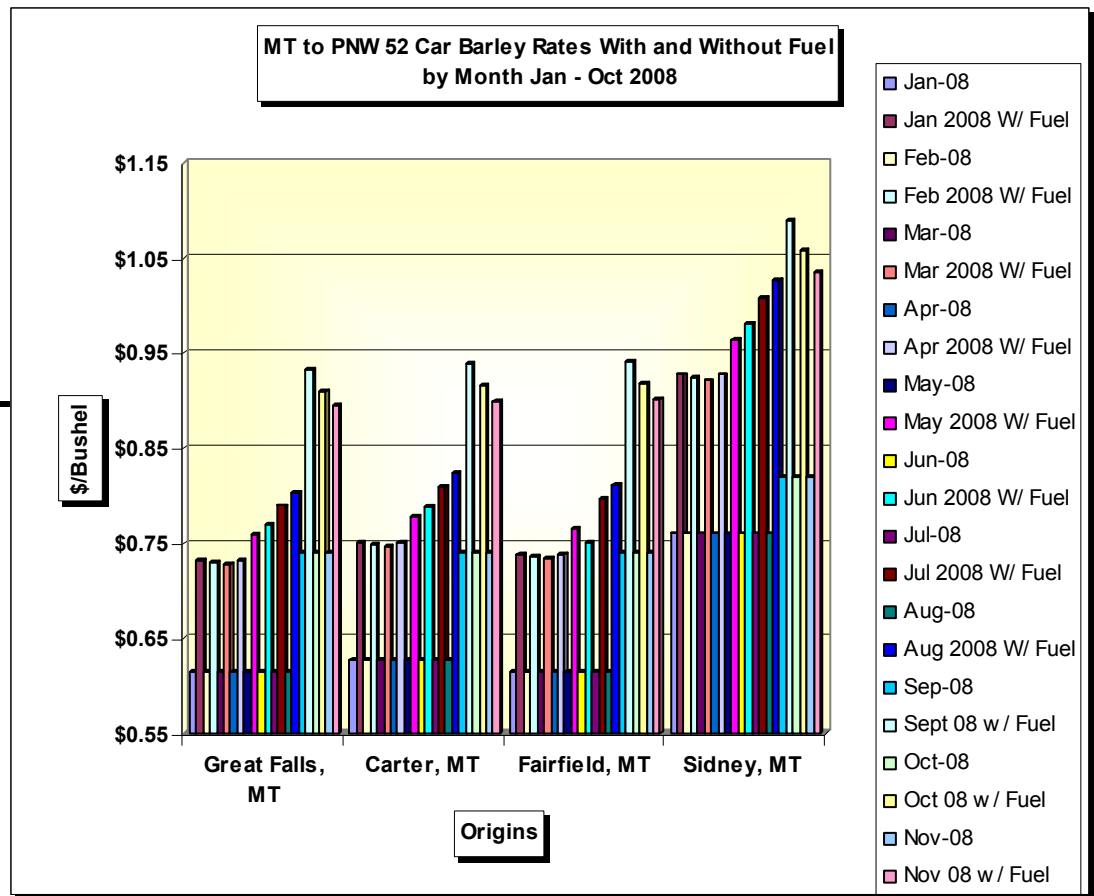
- Pursuant to members request – a brief summary of MT grain rate changes in the coming months

MT Rail Rates Are Starting To Rise Even As Fuel Surcharges Fall

And With The Prices Of Grain Where They Are – The Cost of Rail Transportation vs. Price of Grain is Again Approaching 1/4 the Price of Grain in parts of the Grain belt

Montana Barley Rate Increases in October - +\$200- \$500/car + Shuttles Up Another \$200/car & 1-110 up another \$100/car in December/January

- Published on the MWBC website by month to allow producers to access on a monthly basis – shows effect of fuel surcharges
- The effect of fuel surcharges can be clearly seen in chart

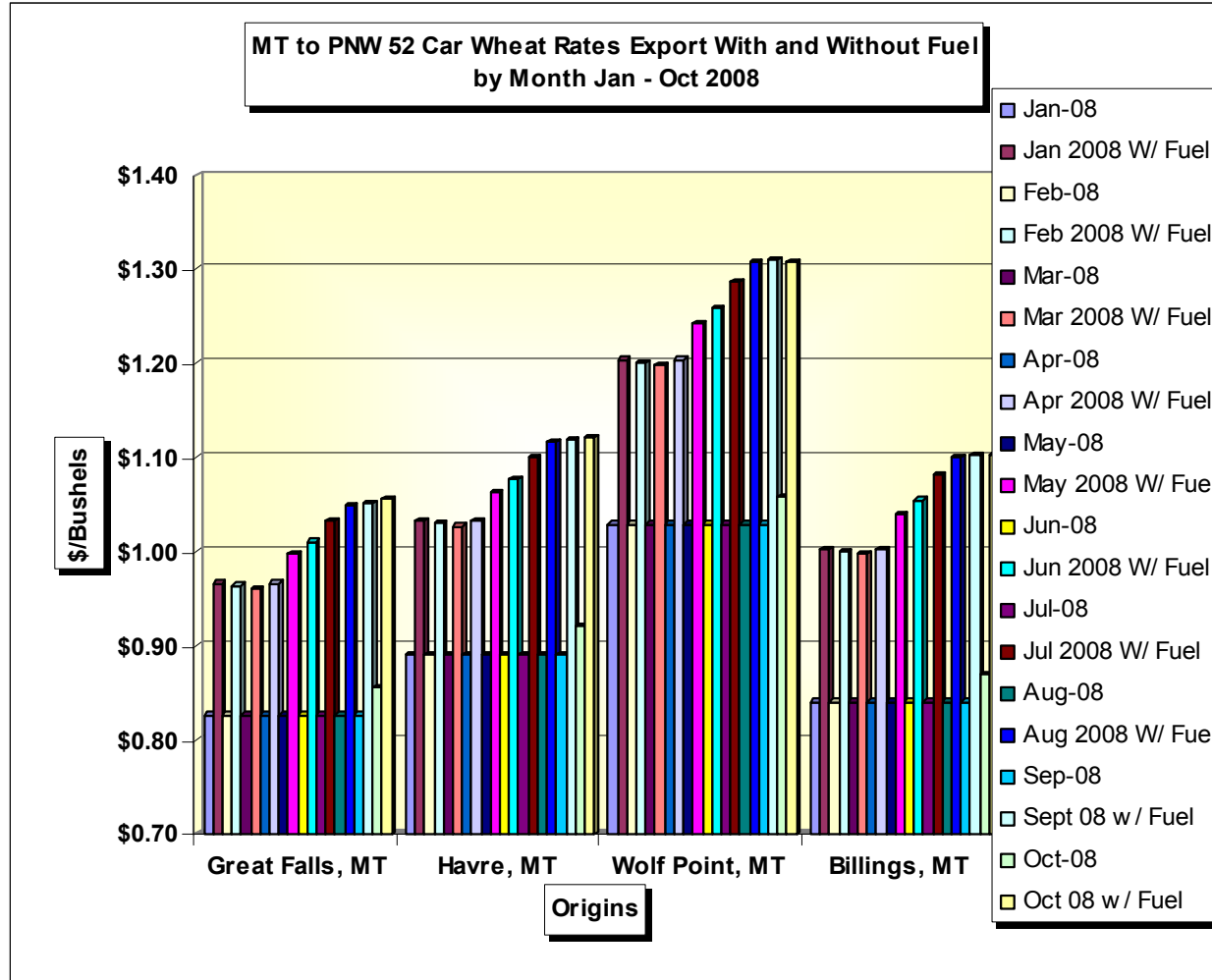


Non-Shuttle Export Wheat Rates

Westbound \$100/car Increased in Oct

Following Non-Export Aug Increase

Published
on MWBC
Website



Fuel
Surcharge
to be
rebased in
February
= higher
base rates